

# **Zoning Board of Appeals**

TOWN OF BRUNSWICK

336 Town Office Road

Troy, New York 12180

## **MINUTES OF THE ZONING BOARD OF APPEALS MEETING HELD November 19, 2012**

PRESENT were JAMES HANNAN, TIMOTHY CASEY, E. JOHN SCHMIDT, MARTIN STEINBACH and CAROLINE TRZCINSKI.

ALSO PRESENT was JOHN KREIGER, Code Enforcement Officer.

The Members of the Zoning Board of Appeals held an informal workshop meeting at 5:30 p.m. At that informal workshop meeting, the Zoning Board of Appeals Members decided to formalize the workshop meeting schedule, and at all future meetings of the Zoning Board of Appeals a workshop meeting will be noticed to commence at 5:30 p.m., with the formal business meeting of the Zoning Board of Appeals to commence at 6:00 p.m., both to occur on the regularly-scheduled evening for Zoning Board of Appeals meetings. The formal workshop meetings will continue to be held for the purpose of reviewing files and discussing matters pending at that time before the Zoning Board of Appeals. The workshop meetings will be open to the public, but will not include any public comment nor public hearing. The Zoning Board of Appeals Members also discussed procedural issues in future regular business meetings. The Members discussed the procedural option of performing an initial review of filed application materials, including a presentation of the application materials by the Applicant, at a regular business meeting of the Zoning Board of Appeals, and upon determination by the Board Members that the application is complete and ready for public hearing, thereafter the public hearing will be noticed and held at the next regularly-scheduled business meeting. This procedural option allows the Board Members to discuss the application materials with the

Applicant, obtain consent of the Applicant to access the property which is at issue in the application in order to view the parcel in question plus the surrounding parcels, and to thereafter conduct the public hearing upon determination that the application is complete. The Members of the Zoning Board of Appeals considered this to be a reasonable procedure, and will apply such procedure on future applications before the Zoning Board of Appeals.

Chairman Hannan called the regular meeting of the Zoning Board of Appeals to order at 6:00 p.m. The Zoning Board of Appeals Members then inquired as to the status of the minutes of the October 2012 meeting. Newly-appointed Attorney Gilchrist stated that due to the transition of appointed counsel to the Zoning Board of Appeals, minutes of the October meeting had not yet been prepared. Attorney Gilchrist stated that he would review the audio recording of the October 2012 meeting, and prepare minutes for review by the Members of the Zoning Board of Appeals.

The first item of business on the agenda was the application for area variance submitted by Eugene and Joan McCall, 5 Willowbrook Lane, for the installation of a new shed building on the parcel. According to the application, the proposed construction of the shed violates the rear-yard and side-yard setbacks in the R-15 Zoning District, in that a 9' side-yard setback is proposed while the Brunswick Code requires a 15' side-yard setback, and an 8' rear-yard setback while the Brunswick Code requires a 20' rear-yard setback. The Applicants were present, and Eugene McCall explained that he was proposing to replace an existing metal shed which is 32 years old, with a new shed at the same location and on the same concrete foundation. Mr. McCall stated that both of his adjoining neighbors had sent letters to the Town stating that they had no objection to the replacement of the metal shed with a new shed. Chairman Hannan reviewed the letters from the neighboring property owners, specifically a letter from Sarah J.

Scott dated November 12, 2012, and a letter from John and Catherine Marschilok dated November 12, 2012, both generally stating that each has no objection to the proposal. Chairman Hannan also noted that a photograph of the existing shed and location on the parcel is included in the application documents. Member Trzcinski inquired whether the proposed new shed would be metal. Mr. McCall stated that the new proposed shed will be a wood structure. Member Trzcinski requested a picture or other depiction of the proposed wood shed structure. Mr. McCall stated that a picture or other depiction is not available, and that he would be building the wood structure. Mr. McCall confirmed that the existing concrete pad would be used for the new shed structure, and that it would not be relocated or enlarged. Chairman Hannan inquired as to the general design of the new shed. Mr. McCall stated that it would be a standard shed structure, with a two-door front for purposes of storing general yard equipment and miscellaneous items. Member Trzcinski inquired whether there would be any electric hookup to the shed. Mr. McCall stated that there would be no electrical connection for the shed structure. Member Steinbach confirmed that the letters from the adjoining neighbors indicate no objection, and that these would be the parties most affected by the new shed structure. Mr. McCall responded by stating that his neighbors were agreeable with his proposal, that a metal shed had been in that location for the past 32 years, and that a new wood shed would be an improvement for his neighbors. Member Schmidt stated that he has no questions at the present moment, but would like to see the property before further considering the application. Member Casey inquired whether Scott and Marschilok were the only neighbors affected by the shed location. Mr. McCall stated that these were the only neighbors affected, and generally described the layout of his yard in relation to surrounding properties. The Zoning Board Members confirmed that there was adequate information in the application for purposes of public hearing, and has scheduled a public hearing

on this area variance application to be held at its December 17 meeting.

The next item of business on the agenda was an area variance application submitted by Eric Smith, 7 Kemp Avenue, seeking an area variance for the installation of an in-ground pool in the R-9 Zoning District, seeking a variance for a 5' rear-yard setback while the Brunswick Code requires a 20' rear-yard setback in this District. Mr. Smith was present, and generally described his proposal to the Zoning Board Members. Mr. Smith noted that a schematic of the parcel, including current house and garage location and proposed pool location, is provided in the application. Member Trzcinski stated that it appears there is sufficient room in the side yard of this parcel for installation of the pool, and that the Applicant could move the pool location to the side yard. Mr. Smith responded that placing the pool in the side yard would eliminate the side yard for use, that the entire side yard would be taken up by pool and required fencing, and that the preferred location is to the rear of the house adjacent to the rear property line. Member Trzcinski wanted the Applicant to confirm that there were no septic systems located on the parcel. Mr. Smith stated that there were no private septic systems, and that the parcel is serviced by sewer and public water. Member Trzcinski repeated that the pool location could be moved to the side yard if necessary. The Applicant reiterated that the side yard is used for recreational purposes, that the preferred location is in the rear yard, and that the adjoining neighbor does not have any objection to the pool, and that there are other pools in the neighborhood similarly situated. Member Steinbach stated that he was not familiar with the property location, and inquired whether it would be agreeable with the Applicant to do a site visit to the parcel. Mr. Smith stated that he consented to a site visit by the Zoning Board Members. Members Schmidt and Casey had no questions on this application at this time. The Zoning Board Members determined that there was adequate information in the file for the purposes of holding the public

hearing, and determined that the public hearing on this area variance application will be held at its regular business meeting in December.

The next item of business on the agenda was the application for area variance submitted by Eleanor Montiel-Ochoa for property located at 520 McChesney Avenue. The Applicant seeks to construct a barn on the subject parcel as an accessory structure in the A-40 Zoning District, with proposed front-yard setback of 20' and proposed rear-yard setback of 13', whereas the Brunswick Code requires a 75' front-yard setback and a 25' rear-yard setback in the A-40 Zoning District. Mr. Kreiger stated that this application was before the Zoning Board of Appeals in November of 2011, at which time the application was forwarded to the Rensselaer County Department of Economic Development and Planning for review and recommendation. As part of the County planning review and recommendation, the County recommended that given the presence of unstable soils in close proximity to the proposed barn location, the Applicant should have an engineer review the suitability of the site for construction. At that time, the Applicant pursued other options, but is now pursuing the original area variance application. In this regard, the Applicant has submitted a letter report from H2H Associates, LLC dated September 30, 2012 addressing the potential of soil erosion on the subject property. The H2H Associates letter report concludes that there is no evidence to suggest that the soils on the parcel are actively eroding at the proposed barn location or along the steep slope to the south of the proposed barn location, and that the construction of the barn as proposed using accepted, standard construction practices should have negligible affect on the steep slope. The Zoning Board Members generally discussed the content of the H2H Associates letter concerning soil stability and the location of the proposed barn in relation to the steep slope to the south. The Zoning Board Members generally had no further questions for the Applicant at this time, but determined there was

adequate information in the application for purposes of scheduling a public hearing. The public hearing on this application will be held at the Zoning Board regular business meeting in December.

The next item of business on the agenda was the application for special use permit submitted by Reiser Bros. Inc. for the proposed Brunswick Farms project located on NY Route 2 and NY Route 278. The application for special use permit addresses a proposed “filling station” as part of one of the commercial lots, on which a convenience store and retail gas sales is proposed at the intersection of NY Route 2 and NY Route 278. The Zoning Board of Appeals has held the requisite public hearing on this application, and the Zoning Board Members have had initial deliberations on the application materials, have considered comments received from the public, and will further deliberate on the special permit standards set forth in the Brunswick Zoning Ordinance in relation to this “filling station” proposal. It is noted on this application that compliance with the State Environmental Quality Review Act has been completed, with the Town of Brunswick Planning Board serving as SEQRA lead agency. The Brunswick Planning Board adopted a negative declaration under SEQRA, which was published in the Environmental Notice Bulletin on September 12, 2012. It is also noted that the Brunswick Planning Board adopted a favorable recommendation concerning the issuance of a special use permit to Reiser Bros. Inc. for the proposed filling station in conjunction with this project. The Zoning Board Members generally determined that the application materials favorably meet the special use permit criteria set forth in the Brunswick Zoning Ordinance, with particular regard to preservation of the character of the area. In that regard, the Zoning Board Members generally discussed the fact that the project includes construction of earthen berms and vegetative screening between the proposed commercial project and the adjacent Brookhill Subdivision, and

that the proposed façade for the convenience store and the canopy associated with the pump island is consistent with surrounding commercial uses, including the Stewarts Shop located immediately across NY Route 278. The Zoning Board Members discussed the points of ingress and egress to the proposed filling station from NY Route 278 and NY Route 2, noting that these entrance locations had been reviewed and conceptually approved by the New York State Department of Transportation. The Zoning Board Members also generally discussed the internal traffic circulation on the proposed convenience store and filling station location, and found them to be adequate. The Zoning Board also discussed the requisite number of off-street parking spaces for the proposed filling station, and Mr. Kreiger reported that the Planning Board had looked at that issue in detail in conjunction with its site plan review, and that both he and the Planning Board have determined that the off-street parking meets Brunswick Code Requirements. The Zoning Board Members directed Attorney Gilchrist to prepare a draft written decision for their review at the December regular meeting, consistent with the deliberation which the Zoning Board Members had in an open meeting at this November regular business meeting. A draft written decision on the special use permit application will be prepared and reviewed at the December meeting.

Mr. Kreiger reported that there were no items of new business before the Zoning Board of Appeals.

The index for the November 19, 2012 meeting is as follows:

1. McCall – area variance – 12/17/12 - public hearing to commence on 12/17/12;
2. Smith – area variance – 12/17/12 - public hearing to commence on 12/17/12;
3. Montiel-Ochoa – area variance – 12/17/12 – public hearing to commence on 12/17/12;
4. Reiser Bros. Inc. – special use permit – 12/17/12 – review and decision.

The proposed agenda for the December 17, 2012 meeting currently is as follows:

1. McCall – area variance – public hearing;
2. Smith – area variance – public hearing;
3. Montiel-Ochoa – area variance – public hearing;
4. Reiser Bros., Inc. – special use permit.